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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,483	05/03/2001	Raymond Patrick Johnston	1004-012US01	7764
32692	7590	05/03/2004	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			BELL, PAUL A	
		ART UNIT	PAPER NUMBER	
		2675	8	
DATE MAILED: 05/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/848,483	JOHNSTON ET AL.
	Examiner PAUL A BELL	Art Unit 2675

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-48,50 and 51 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,9,18,19,25-27,29,30,38-48,50 and 51 is/are rejected.
- 7) Claim(s) 5-8,10-17,20-24,28,31-37 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 46-48 and 50-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Galkiewicz WO 01/58302 A1 "SELF-MATING RECLOSABLE MECHANICAL FASTENERS AND BINDING STRAP" filed 5 February 2001.

With regard to claim 46 GALKIEWICZ teaches an apparatus comprising: a bottom layer (figure 2a the structure on bottom), a top layer (figure 2a the structure on top), and means for engaging the top and bottom layer such that upon engagement (figure 2a illustrates layers with hook-like elements that figures 3a-d teach how they engage), an amount of travel is defined between the top and bottom layers (figure 2a, items 40 and 42 and in addition series figures 3a-d and 4a-d illustrate the defined travel).

With regard to claim 47 GALKIEWICZ teaches the apparatus of claim 46, wherein the means for engaging includes a plurality of hook-like elements (figure 2a).

With regard to claim 48 GALKIEWICZ teaches an apparatus comprising: a first layer including a first set of hook-like elements, a second layer including a second set

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of hook-like elements, wherein the first and second sets of hook-like elements are engaged, thereby attaching the first layer to the second layer (figures 3a-3d) wherein the engaged sets of hook-like elements collectively define a distance of travel between the first and second layers (figures 3a-3d and 4a-d illustrate the defined travel).

With regard to claim 50 GALKIEWICZ teaches the apparatus of claim 48, wherein the distance of travel is in the range of 0.05 centimeters to 1 centimeter (figure 2a, items 42 and 40 also SEE page 28 Engagement test "The two blocks are brought together, with mating surfaces facing one another, as parallel planes at 5 mm/min" reads on this range).

With regard to claim 51 GALKIEWICZ teaches the apparatus of claim 48, further comprising a spring element biasing the first and second layers away from one another (figure 3c and 3b show that there is spring (or flexible) to item 15 reads on this broad language).

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-4, 9, 18, 19, 25-27, 29, 30, 38-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 9, 11-36 of U.S. Patent No. 6,690,360. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims are viewed as more narrow (more limitations) than the present application claims and the main difference is in one you call it a "dome spring element" and the other you call it a "spring element" but the common specification teaches they must be the same element therefore such claims are obvious.

***Allowable Subject Matter***

5. Claims 5-8, 10-17, 20-24, 28, and 31-37 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 1-45 would have been allowed if a proper terminal disclaimer had been filed.

7. The following is a statement of reasons for the indication of allowable subject matter: With regard to claims 1-45 and there independent claims 1, 18, and 29 the prior

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art of record officially listed in this case does not teach or suggest the features, "top layer engaged with the bottom layer and **biased away** from the bottom layer **upon protrusion of the spring elements** through the holes in the bottom layer", as argued by applicant and illustrated in applicant's figure 8 an example of "protrusion" of a spring element into the bottom layer. The closest prior art of record is Walser (4,423,294) which in contrast top layer 132 of Walser **is not** biased away from bottom layer 126 upon protrusion of the spring elements through the holes in the bottom layer.

***Response to Arguments***

8. Applicant's arguments filed 1/6/2004 have been fully considered but they are not persuasive.

Applicants statement with regard to the double patenting in the first action may be possibly viewed as nonresponsive and in any case examiner maintains double patent rejection and request you properly address this issue in next response.

The applicant argues with regard to independent claims 46 and 48 that Galkiewicz does not teach "a distance of travel is defined between the first and second layers when the layers are engaged".

The examiner disagrees and notes this is not the exact wording of the claim and further references the more detailed rejection of this very broad language used.

The applicant argues with regard to dependent claim 50 that Galkiewicz does not teach or suggest that "the distance of travel between engaged top and bottom layers is in the range of 0.05 centimeters to 1 centimeter".

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The examiner disagrees with applicant and further references the more detailed rejection of this claim above.

### Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Bell whose telephone number is (703) 306-3019.

If attempts to reach the examiner by telephone are unsuccessful the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377 can help with any inquiry of a general nature or relating to the status of this application.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Or Faxed to: (703) 872-9314 (for Technology Center 2600 only)

Or Hand-delivered to: Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor  
(Receptionist).

*Paul Bell*  
Paul Bell  
Art unit 2675  
February 20, 2004



STEVEN SARAS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600